the plaintiffs have already paid to the injured person, with interest and costs.

Judgment for the plaintiffs.

Solicitors: *Lovelace & Hastings; Braddell & Ramani.*

LIM KO & ANOR. v. BOARD OF ARCHITECTS

[A.C.J. (Abdul Aziz J.) June 17, 1965]

[K.L. — Originating Motion No. 48 of 1963]

Architects — Disciplinary proceedings — "Unprofessional conduct" — Matter for board to decide — Delegation of powers to disciplinary committee to conduct enquiry — Board acting on report of disciplinary committee — Removal of names from register of architects — Natural justice — Appeal against order of board — Architects Ordinance, 1951, ss. 9 and 16.

The board of architects appointed a disciplinary committee to conduct an inquiry and to hear witnesses and take evidence in connection with allegations of "unprofessional conduct" against the appellants. Subsequently after receiving the report of the committee the board found that the appellants had been guilty of acts of "unprofessional conduct" within the provisions of section 9(1)(b) of the Architects Ordinance in that the first appellant had signed plans not prepared by him and the second appellant had permitted the submission of these plans in his name for the approval of the Ipoh Town Council. The board accordingly removed the names of the appellants from the register of architects. On appeal the grounds upon which the appeal were based were that (i) the board had failed to hold inquiry under section 9(1) of the Architects Ordinance; (ii) the board had acted outside the scope of their authority in delegating its powers to the committee; (iii) the appellants were never allowed to know the specific allegations that were laid against them and in the result they were seriously prejudiced in the preparation of their defence; (iv) the board had come to a decision adverse to the interests of the appellants even before they were given an opportunity to present their case; (v) the appellants were denied a fair opportunity of stating their case and being heard in their defence; and (vi) the board in the whole conduct of the proceedings had acted contrary to the rules of natural justice.

Held: (1) it is not for the court to say whether any particular act or conduct is infamous in any professional respect. The statute has appointed the board as the custodian of professional ethics and etiquette of the architectural profession and it is for them to say whether on the facts any registered architect is guilty of infamous conduct; and a review of the decision of the board must be limited to a consideration, apart from the question of natural justice, whether there is some evidence which could reasonably support the decision of the board;

(2) there can be no objection to the method of inquiry adopted by the board in this case as the inquiry committee was not given any power to make any adjudication and the power to do so was retained by the board;

(3) in this case the appellants had ample opportunity to present their case to the board and therefore the requirements of natural justice in this respect had been complied with;

(4) whether or not there has been a breach of the rules of natural justice by reason that a domestic tribunal has taken into consideration an undisclosed document in coming to its conclusion would depend on the document itself and the probable damage arising from its disclosure and in this case the board was justified in not disclosing the report contained in the Town Council file, which was the property of the Town Council.

Cases referred to:—

(1) *Allinson* v. *General Council of Medical Education and Registration* [1894] 1 Q.B. 750.

(2) *Allender* v. *Council of the Royal College of Veterinary Surgeons* [1951] 2 All E.R. 859.

(3) *Hughes* v. *Architects Registration Council of the United Kingdom* [1957] 2 Q.B. 550.

(4) *Osgood* v. *Nelson* (1872), L.R. 5 H.L. 636.

(5) *University of Ceylon* v. *Fernando* [1960] 1 W.L.R. 223 at page 229; [1960] 1 All E.R. 631.

(6) *Ridge* v. *Baldwin & Others* [1963] 2 All E.R. 67 at page 80.

(7) *Russell* v. *Duke of Norfolk* [1949] 1 All E.R. 109, 118.

(8) *Byrne* v. *Kinematograph Renters Society Ltd.* [1958] 1 W.L.R. 762 at page 784.

(9) *Surinder Singh Kanda* v. *Government of Federation of Malaya* [1962] M.L.J. 169 at p. 172.

(10) *Official Solicitor* v. *K* [1963] 3 All E.R. 191 at p. 205.

ORIGINATING MOTION.

R. R. Chelliah (*H. Sankey* with him) for the appellants.

S. D. K. Peddie for the respondent.

Cur. Adv. Vult.

Abdul Aziz J.: This is an appeal under section 16 of the Architects Ordinance 1951 against the order of the board of architects removing the names of the appellants from the register of architects.

The proceedings before the board commenced with a letter dated 26th October, 1961, from the secretaries, board of architects, to the first appellant (Lim Ko) who is registered under Part I of the register —

(a) stating that the board is given to understand that the dawing submitted to the Ipoh Town Council in respect of a six-storeyed building was in fact signed by the second appellant (Wong Chee Leong);

(b) that the advertisement in the *Straits Times* showed that the plan and tender documents could be obtained from the second appellant; and

(c) informing the first appellant that there will be an enquiry by the board following information laid, and inviting the first appellant to give an explanation.

The first appellant replied on 3rd November, 1961 stating that he designed the plan of the building and signed and submitted it to the Ipoh Town Council for approval, that as he was away from Ipoh at the time he admitted he had "put the plans and tender documents in the second appellant's place." On 29th March, 1961, the secretaries wrote to the first appellant stating —

(a) that the Ipoh Town Council had confirmed that the first appellant had submitted the drawing but alleged that the drawing laid before the board bore the name of the second appellant;

(b) that there appears to be a contravention of rule 48 of the Architects Rules;

(c) that he is requesting the board to consider and examine the case under section 9(1)(b) of the Ordinance; and

(d) asking the first appellant for an explanation and whether he wishes to examine his rights to be heard personally or by counsel.

At the same time the secretaries entered into a similar correspondence with the second appellant. On 25th October, 1961 the secretary wrote to the second appellant referring him to the same advertisement in the *Straits Times* which stated that the plan and tender documents for the building were obtainable from him, and asking him for information —

(a) whether the drawing had been submitted to the local authority, and if so, who signed the drawing;

(b) whether there was any restriction on his right to practice as an architect registered under Part II.

The second appellant replied on 20th November, 1961 stating that the first appellant designed the plan, signed it, and submitted it himself to the Ipoh Town Council, and confirmed that there was a restriction on his right to practice (according to the condition of the licence an architect registered under Part II cannot prepare a plan for a building of the size of the building in question). On 13th April, 1963 the secretaries (registrar) wrote to the second appellant stating that his previous reply did not agree with the information placed before the board and that he was asking the board to institute an enquiry under section 9(1)(b) of the Architects Ordinance and enquiring whether he wishes to appear personally or be represented by counsel at the hearing.

The full board did not sit for that purpose but appointed an investigating committee (apparently under rule 11) to hear witnesses and take evidence. This committee incidentally formed a quorum. The committee met on 6th July, 1963 and at the enquiry Mr. Sankey appeared for both appellants. The second appellant also appeared in person, but the first appellant was absent. The appellants were informed that the subject of the enquiry was "Alleged unprofessional conduct on the part of Wong Chee Leong (2nd appellant) — infringement of rule 45, and Lim Ko (1st appellant) — infringement of rule 48, in respect of proposed building on Lot Nos. 2022-2025, Jalan Yang Kalsom, Ipoh, for Kinta Insurance Co. Ltd."

It was also indicated that the evidence to be adduced will be "in the form of certain drawings to be produced and that Mr. Wong Chee Leong and his counsel would be asked to answer questions". Questions were then put to the second appellant, to which he gave certain replies. It is clear from the record that the committee was dealing with unprofessional conduct and breaches of rules 45 and 48; that the breaches relate to drawings Nos. 2003 and 2005, job 131, i.e. multi-storeyed block of offices for Kinta Insurance Co. Ltd., the drawings for which can only be prepared by an architect registered under Part I; that the said drawings were properly before the board; that appellant No. 2 admitted that he "put finishing touches to the drawing for Lim Ko"; that he has not yet been paid for his services by Lim Ko; that the tender notices in respect of the building published in the *Straits Times* were issued by appellant No. 2 and this advertisement stated that the plan and tender documents in respect of the building could be obtained from appellant No. 2; and that the drawing before the board bore the name of Wong Chee Leong although the application for approval was submitted by Lim Ko. The Ipoh Town Council's file relating to the application for the erection of this building was also produced before the board and the file contains a set of plans similar to the ones before the board but bearing the name of Lim Ko (appellant No. 1) over erasure marks, and also a report alleging forgery on the part of person or persons unknown.

It is also apparent from the records that when questions were put to appellant No. 2 the answers he gave amounted to admissions implicating himself and appellant No. 1 who was absent. Up till that stage he had admitted that he had put the finishing touches to the drawings on behalf of appellant No. 1 and that payments are expected for that service from him. Possibly to divert the committee from this line of questioning, counsel then quite improperly put questions to the board to which the board unfortunately condescended to reply. A substantial part of the record shows questions put by the counsel and the replies given by the board. Having been diverted from its course, the committee composed of lay-men not unnaturally got into confusion. When the committee regained its composure it went back to the purpose of the enquiry and called Enche Aiyub Ghazali who produced the file relating to the building in question. After that the committee adjourned its deliberations.

The minutes of the board of architects show that the committee resumed its hearing on 24th August, 1963 and made the following finding which was reported to the full board:

"That in their opinion their enquiries had disclosed acts of unprofessional conduct on the part of Messrs. Lim Ko and Wong Chee Leong within the provisions of section 9(1)(b) of the Architects Ordinance and further Lim Ko had acted in breach of rule 48 of the Architects Rules".

On 29th October, 1963 the secretaries wrote to both appellants stating that the enquiry into the complaints against them will be heard on 20th November, 1963 and that they were invited to be present in person or be represented by counsel. By that time also the minutes of the committee of enquiry were supplied to the counsel.

On 20th November, 1963 the full board met. Before calling the appellants to join the board, the board confirmed the finding of the committee and made the following resolution:

"That in the opinion of the board Messrs. Lim Ko and Wong Chee Leong had been guilty of acts of unprofessional conduct within the provisions of section 9(1)(b) of the Architects Ordinance in that (a) Mr. Lim Ko signed plans not prepared by him and thereby committed a breach of rule 48 of the Architects Rules 1955, and (b) Mr. Wong Chee Leong had permitted the submission in his name of a certain drawing prepared by his staff (for a proposed building for the Kinta Insurance Company on Lot Nos. 2022-2025, Jalan Yang Kalsom, Ipoh) to the Ipoh Town Council and it was discovered subsequently from Ipoh Town Council File No. MB. 1(P) 821/60 that there was an erasure of his name therefrom and the said drawing was afterwards signed by one Mr. Lim Ko (a Part I Registered Architect)".

After that counsel for the appellants was invited to join the board. None of the appellants appeared at this resumed enquiry. Mr. Sankey was informed by the chairman that "in the opinion of the board there was a *prima facie* case of unprofessional conduct on the part of both his clients and he was asked whether he had anything to say on behalf of his clients". The records show that Mr. Sankey replied by merely asking the board to use its discretion not to strike off the names of the appellants from the register but only to warn them. Having made this statement, Mr. Sankey retired from the meeting. After hearing counsel, the board resolved that the appellants be struck off from the register kept by the board and that their certificates of registration be cancelled and that they be notified accordingly.

The grounds upon which the appeal is based are that the board of architects had failed to hold due enquiry under section 9(1) of the Architects Ordinance, 1951; that the board had acted outside the scope of their authority in delegating its powers to the disciplinary committee; that the appellants were never allowed to know the specific allegations that were laid against them and in the result they were seriously prejudiced in the preparation of their defence; that the board of architects had come to a decision adverse to their interests even before they were given an opportunity to present their case; that they were denied a fair opportunity of stating their case and being heard in their defence; that the board of architects in the whole conduct of the proceedings had throughout acted contrary to the rules of natural justice.

Counsel for the appellants first pointed out that the records and the findings used the term "unprofessional conduct" whereas section 9 of the Ordinance reads "conduct which is infamous in any professional respect". It may be unfortunate that the board has used a common terminology rather than a technical one to refer to conduct under section 9. But when it is considered that the Ordinance itself speaks of "etiquette of the profession" (section 4(e)) and "code of professional conduct" (Part II of the Rules) it is manifest that when the board used "unprofessional conduct" it was dealing with and made a finding in respect of conduct under section 9(1)(b) of the Ordinance.

Section 9(1)(b) under which the appellants were charged reads:

"If any person who has been duly registered under this ordinance shall be guilty of any act or conduct which, in the opinion of the board, is infamous in any professional respect, whether such an act or conduct arises from the breach of the provisions of this Ordinance or of any rule made thereunder or otherwise, the the board may, after due enquiry, order the cancellation of the certificate of registration and the striking off from the register of the name of any such person".

The Ordinance and Rules made thereunder (Part II) enumerated various acts and conduct as being acts or conduct infamous in a professional respect. From the wording of section 9(1)(b) acts or conducts extraneous to those enumerated in the Ordinance and the Rules may also be regarded by the board as infamous.

Rules 45(1) and 48 (L.N. 345 of 1955) which were additional charges against the appellants read as follows:

Rule 45(1). "An architect, except as provided for in para. (3), shall not share or agree to share fees nor shall he enter into partnership in regard to architectural work with any person not registered in Part I of the Register".

Rule 48. "A person registered under the Ordinance shall not sign or put his signature to drawings, plans or specifications not prepared by him or by his staff under his supervision for the purpose of obtaining the sanction of any building authority".

The gravamen of the charge is infamous conduct and preparation of drawings and plans. What do these words mean?

According to *Shorter* Oxford Dictionary, "prepare" means "to get ready or make ready, to bring into proper state for use by some special or technical process". It is clear from the evidence having regard to the meaning of the word "prepare" that the second appellant prepared the drawings and plans on behalf of the first appellant.

The term "infamous conduct in a professional respect" as defined by Lopes L.J. and adopted by the Court of Appeal in *Allinson* v. *General Council of Medical Education and Registration* [1] reads:

"If it is shown that a medical man, in the pursuit of his profession, has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency, then it is open to the General Medical Council to say that he has been guilty of infamous conduct in a professional respect".

It is, therefore, not for the court to say whether any particular act or conduct is infamous in any professional respect. The statute has appointed the board as the custodian of professional ethics and etiquette of the architectural profession, and it is for them to say whether on the facts any registered architect is guilty of infamous conduct, and if they do so find it is for them to decide whether he should remain on the register. It will be noted that this is not an appeal for reinstatement in the register but an appeal against the decision of the board. As far as I can see, it is an appeal under section 9(1)(3) and not under section 16. Ordinarily, upon an appeal against the decision of a lower court, the appellate court treats the case as a re-hearing. This is borne out in *Allender* v. *Council of the Royal College of Veterinary Surgeons,* [2] wherein it is stated that on an appeal against the decision of the council under section 6(5) of the English Act, that section requires the court to hear the case and treat it as a re-hearing in the same way as an appeal from a judge of the High Court sitting at first instance is treated by a Court of Appeal. Again in *Hughes* v. *Architects Registration Council of the United Kingdom,* [3] dealing with the powers of the High Court on appeal it was held that the court was entitled to review the decision of the council (board of architects) and decide whether that decision was right and could be upheld. It should be noted that there is a vital distinction between the English provision and our section in that in our provision the words "in the opinion of the board" have been added. How could the court, having regard to the definition of infamous conduct and the provision of section 9, re-hear the case and decide whether the decision was right and could be upheld applying the same test as the professional body would? It was urged on behalf of the respondent that there is a distinction between cases where the decision challenged is under the rule based on the opinion of the committee on a matter which is primarily one of opinion and which is based primarily on the legal construction of the words. In the former type of cases the powers of the court are limited to a determination as to whether the rules of natural justice have been properly applied. I am, however, not prepared to go that far because this is an appeal and not an application for prerogative orders. As Lord Goddard C.J. said in *Hughes'* case:

"While an appellate court will always attach great importance to the finding of a lower court, especially on findings of fact, if, in their opinion, the decision below is wrong they must give effect to their opinion and reverse it. It is contended that this court cannot reverse the finding that the conduct of the appellant was disgraceful as an architect, though not in the popular sense of the word, because what is or is not proper professional conduct is entirely a matter for the council. On this point reliance is placed in *Allinson* v. *General Council of Medical Education and Registration* and on *Rex* v. *General Council of Medical Registration.*

"The essential and vital difference between those cases and the present, in my opinion, is that no appeal is given from a decision of the General Medical Council and an appeal is given from a decision of the Architects Registration Council. This is not a matter of *certiorari,* it is an appeal".

It was further held that "disgraceful conduct" was not a term of art and should be given its natural and popular meaning. On the facts the court decided that the appellant's conduct was not disgraceful.

Lopes L.J. in *Allinson's* case, which was overruled, treated the matter thus:

"Then I come to the question of infamous conduct in a professional respect and in my opinion if there was any evidence on which the council could reasonably have come to the conclusion to which they did come, their decision is final. If, on the other hand, there was no evidence upon which they could reasonably arrive at that conclusion, then their decision can be reviewed by this court".

In view of the above a review of the decision of the board must be limited to a consideration, apart from the question of natural justice, whether there is some evidence which could reasonably support the decision of the board. Evidence here is used in its loose sense because before the board neither party can compel the attendance of witnesses nor examine any witness on oath.

Before I consider whether the rules of natural justice have been complied with I would like to dispose of three minor points raised by the appellants. First, that the board had acted outside the scope of its authority in delegating its powers to the disciplinary committee. This question, to my mind, turns on whether the board has in fact delegated its authority to the committee.

In *Osgood* v. *Nelson* [4] it was held that the appointment of a committee to take evidence and ascertain the truth of it, not for the purpose of that committee coming to any judgment or decision themselves, but for the purpose of their report being submitted to the mayor, aldermen, and commons in order that they might come to a judgment upon it is not delegation.

In *University of Ceylon* v. *Fernando* [5] the allegation to the effect that the finding was not arrived at in accordance with clause 8 turned on

the fact that the Vice-Chancellor appointed two other persons to sit with him as a commission of inquiry to investigate the matter, instead of proceeding to investigate it alone. It was held in both courts that this procedure was not open to objection, inasmuch as this was merely a method, which the Vice-Chancellor was free to adopt if he chose to do so, of satisfying himself of the truth or falsity of the charge.

Applying the above test to the present case, there can be no objection to the method adopted by the board in this case. It is clear that the committee was not given any power to make any adjudication on the matter. The power to do so was retained by the full board. The committee met and took evidence and the evidence as ascertained by the committee was submitted to the full board for its consideration.

The second point was that there was no due enquiry held by the board. To my mind this ground for complaint is not supported by the facts.

The third point is that the board had come to a decision adverse to their interest before they called upon the appellants to state their case. This may be true of the resolution made by the board on 20th November, 1963 before the appellants were called upon to state their case. If the matter had stopped there I think there would be ground for questioning the propriety of the resolution. But the matter did not stop there. The board then called upon the appellants and gave them an opportunity of presenting their case. Whatever defects there were in the proceedings thus far had been remedied by the subsequent action of the board. In this I find support in *Ridge* v. *Baldwin & Ors.*[6] where Lord Reid said:

> "I do not doubt that if an officer or body realises that it has acted hastily and reconsiders the whole matter afresh after affording to the person affected a proper opportunity to present his case then its later decision will be valid".

The only real question calling for a decision is whether the requirements of natural justice have been complied with. Tucker L.J. in *Russell* v. *Duke of Norfolk* [7] states:

> "The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth".

Harman J. (as he then was) in *Byrne* v. *Kinematograph Renters Society Ltd.*[8] said this:

> "What then are the requirements of natural justice in a case of this kind? First, I think that the person accused should know the nature of the accusation made; secondly, that he should be given an opportunity to state his case; and thirdly, of course, that the tribunal should act in good faith. I do not myself think that there really is anything more."

The principle of natural justice has been summarised in *Surinder Singh Kanda* v. *Government of Federation of Malaya* [9] by Lord Denning as follows:

> "If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them. This appears in all the cases from the celebrated judgment of Lord Loreburn L.C. in *Board of Education* v. *Rice* down to the decision of their Lordships' Board in *Ceylon University* v. *Fernando*. It follows, of course, that the judge or whoever has to adjudicate must not hear evidence or receive representation from one side behind the back of the other".

The first ground of complaint in this regard is that the appellants were never allowed to know the specific allegations laid down against them and in the result they were seriously prejudiced in the preparation of the defence. It is true that there were no formal charges preferred in the form that we know in criminal cases. The board may not be aware of previous decisions on this point, and not being assisted by anyone with any legal training they may not be aware that the charge preferred against the appellants should contain sufficient particulars of the allegations but that is far different from saying that the appellants did not know the allegation against them. The appellants had the benefit of counsel throughout the entire proceedings and it is apparent from the correspondence between the board and the appellants and the proceedings before the investigating committee that the board was dealing with unprofessional conduct and breaches of rules 45 and 48 and that these allegations related to the plans which the first appellant signed and the second appellant prepared, plans and drawings for a building which appellant No. 2 was not authorised to prepare. From the replies to the board's letters and the answers given to the questions put by the board at the enquiry there can be no question that the appellants knew it also.

There can be no question also that the appellants had ample opportunity to present their case to the court. When it was explained to the counsel that a *prima facie* case had been made out against his clients on a charge of unprofessional conduct he failed to use the opportunity to state his case or, if he had no time then, to ask for time to prepare his defence. One argument in this respect was that non-disclosure of the contents of the file to the appellants in this particular case was contrary to the rules of natural justice. On the facts I think not. In the first place the plans and drawings in the file were similar to those already before the board, and in the second place the report alleging forgery on the part of person or persons unknown is irrelevant to a charge of infamous conduct under rule 48. The board may have taken cognisance of this report when it made a resolution on 20th November, 1963 in

regard to the second appellant, but the essence of that resolution insofar as this appellant was concerned was the preparation and submission in his name of plans and drawings for the building which he was not authorised to do. In that regard that report is irrelevant. But the board did consider the report in the second part of its resolution and treated the report as the property of the Ipoh Town Council and therefore did not divulge the contents to the appellants.

The non-disclosure of evidence or, to put it in the language used in *Kanda's* case, the "hearing of evidence from one side behind the back of the other" is contrary to the rules of natural justice. But when it is considered that his Lordship in that case was not enunciating any new principle but merely summarising the principle already well established by a long line of reported cases and when from the facts in *Fernando's* case some evidence was in fact heard behind the back of the accused, it would appear that the rule is not so rigid as it is made out to be. As Lord Jenkins said in *Official Solicitor* v. *K.*: (10)

"It is objected that the use by the court of undisclosed documents or information in wardship cases is objectionable as offending against the fundamental principle of justice to the effect that anyone against whom a charge is made must be given a fair opportunity of knowing and understanding what the charge is and on what evidence it is based. The question whether in a particular case compliance with that principle should be accorded greater or less importance than the probability, whatever it may be, of damage (if any) to the infant ensuing from such compliance, depends on the facts of that particular case; and any attempt to formulate general pronouncements applicable to all cases will be likely to create more difficulties than it solves."

In my view, whether or not there has been a breach of the rules of natural justice by reason that a domestic tribunal has taken into consideration an undisclosed document in coming to a decision would depend on the document itself and the probable damage ensuing from its disclosure. As I read the document, I agree with the board that the disclosure of the document under the circumstances would be unwarranted.

The appeal will therefore be dismissed with costs.

Appeal dismissed.

Solicitors: *R. R. Chelliah Bros.; Skrine & Co.*

CHAI KOR v. PUBLIC PROSECUTOR

[F.C. (Barakbah C.J. (Malaya), Wylie C.J. (Borneo) and Tan Ah Tah F.J.) July 13, 1965]

[K.L. — Federal Court Criminal Appeal No. 24 of 1965]

Criminal Procedure — Trial — Evidence of deaf-mute — Necessity to direct jury on such evidence.

Evidence — Witness — Competency — Witness whose evidence could not be properly understood and to whom proper questions could not be put — Direction to jury on such evidence — Evidence Ordinance, 1950, s. 118.

In this case one of the principal witnesses against the appellant at the trial was a deaf-mute whose evidence could not be properly understood and to whom proper questions could not be put at all.

Held: (1) the circumstances concerning the evidence of the deaf-mute in this case demanded that the judge should warn the jury in the strongest terms to consider whether they should or should not accept his evidence and this was a case where the judge would be justified in directing the jury that they could not safely accept his evidence, or further that the evidence should be excluded from their consideration altogether as he was not a competent witness under section 118 of the Evidence Ordinance;

(2) as the jury had not been properly directed in this case, the appeal must be allowed and the conviction quashed.

Cases referred to:—

(1) *R.* v. *Attfield* [1961] 1 W.L.R. 1135; [1961] 2 All E.R. 243; 45 Cr. App. R. 309, 312.

(2) *R.* v. *Imrie* 12 Cr. App. R. 282.

FEDERAL COURT.

Dato' David Marshall (*S. A. Raj* with him) for the appellant.

B. T. H. Lee (Deputy Public Prosecutor) for the respondent.

Wylie C.J. (Borneo) (delivering oral judgment): This appellant who has been convicted of murder was originally charged with another accused whom the jury acquitted at the end of the case for the prosecution.

The prosecution case so far as concerns the two accused, really depended on the evidence of two witnesses only. One was Krishnasamy s/o Kandiah and his evidence was to the effect that he had seen both the accused assaulting the deceased with instruments that could have been daggers. Having seen that, he himself said that he went home, had his meal and went to bed. He said that he told no one about this incident until 20 days later when, as a result of an approach from the police, he himself went to the police. He said that he was very friendly with the police; he even helped them with their garden. It can only be described as very extraordinary conduct for a man in that position to keep the story to himself and not speak about it to his friends the police during the whole of that 20 days.

There are also other features in his evidence which lead to the conclusion that his evidence should be treated with caution. At the close of the case for the prosecution the jury found the first accused not guilty. That has an important bearing with regard to the evidence of this witness. For his evidence to the effect that No. 1 accused was one of the persons attacking the deceased was at variance with the evidence of the other eye-witness. The other eye-witness saw only one attacker and it was assumed by the judge, and rightly so it seems, that, by acquitting